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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

IN THE MATTER OF BLACK RANCHES, INC., A Nebraska Corporation, Debtor, in Corporate Reorganization Proceedings under Chapter X of the Federal Bankruptcy Act.

ROE R. BLACK, AVIS C. BLACK, ROE C. BLACK, BLACK RANCHES, INC., A corporation, Debtor, and THOMAS HART FISHER,

Petitioners,

vs.

ANNA C. BRANDO, as Administratrix of the Estate of MARLON BRANDO, SR., Deceased, and MARLON BRANDO, JR.,

Respondents.

ANSWERING BRIEF OF PETITIONERS IN OPPOSITION TO RESPONDENTS' "CONDITIONAL CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT."

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Respondents' so-called "Conditional Cross-Petition for a Writ of Certiorari" raises only *three factual questions*, each of which had been decided by the trial judge based upon the evidence in the trial court, to-wit:

1. Assuming that Debtor's two promissory notes embodied in Marlon Brando, Jr.'s Bankruptcy Claim No. 22 were correctly held to be valid by the trial court, was there sufficient factual evidence to support the trial judge's factual finding that the two mortgages on Debtor's real estate securing these two notes were the result of fraud and breaches of fiduciary duty on the part of the claimant, Marlon Brando, Jr.?

2. Was there sufficient factual evidence in the trial court to support the trial judge's factual finding that two contracts between Marlon Brando, Jr. and Roe R. Black individually were not in fact the debts of Debtor?

3. Was there sufficient factual evidence in the trial court to support the trial judge's factual finding that Roe R. Black did not manipulate or commingle Debtor's assets with his own "operations," or use Debtor's assets for his own personal benefit or profit without accounting for the same?

Under the well known "clearly erroneous rule," upon which Respondents rely in their answering brief to our Petition for Certiorari (pages 4 5) by citing *General Talking Pictures Corp.* v. *Western Electric Co.*, 304 U.S. 175, the burden is thus admittedly upon Respondents to show in their Conditional Cross-Petition that the trial court's findings of fact on each of the three factual issues mentioned above were "clearly erroneous." RESPONDENTS DO NOT EVEN ATTEMPT TO DO THIS IN THEIR CONDITIONAL CROSS-PETITION.

After trying (p. 4) to confuse the validity of the promissory notes with the validity of the two mortgages on Debtor's lands securing them, Respondents assert (p. 5) that "The totality of the mass of evidence" supposedly showing that in fact Roe R. Black's "method of operation . . . amounted to a scheme devised to defraud his cattle

customers and others of vast sums of money" was sufficient to bring Debtor "within the rule that his [Black's] debts and obligations are the debts and obligations of the Debtor corporation." HOWEVER, NOT A SINGLE CITATION TO THE RECORD SUPPORTS ANY OF THESE FACTUAL CLAIMS.

Similarly, Respondents assert (page 5) that there was "evidence that Black used the assets of the corporation for his own personal benefit and profit," despite the factual finding of the trial court that Black did nothing but sell some equipment to the Debtor corporation (Supp. R. 19-27). And Respondents add (p. 5) that the facts show that there was "gross under-capitalization" of Debtor, so that "the sums of money provided by Black should have been regarded as capital supplied to the corporation," despite the factual finding of the trial court directly to the contrary (Supp. R. 31).

Respondents' "Argument" (p. 6) is the incredible one that, merely because the trial court held (1) that Black's method of operation did not in fact amount to a scheme devised to defraud his cattle customers and others, (2) that his debts and obligations were not in fact the debts and obligations of Debtor, (3) that Black did not in fact use the assets of Debtor for his own personal benefit and profit and did account for all of it in the trial court, and finally (4) that there was in fact no gross or other under-capitalization of Debtor, it follows that "for all practical purposes" the trial court and the Court of Appeals erroneously held in this case that "under no circumstances could a [meaning "any"] corporation secure a corporate officer for money advanced for the use of the corporation, even in the absence of irregularity, wrongdoing, overreaching or dishonesty," citing various Nebraska cases, none of which have any bearing upon the Brando Claim No. 22 to which this whole "Argument" is directed (p. 6).

Respondents' whole "Argument" (pp. 6 7) is thus exclusively directed to an effort to review the trial court's factual finding that the two mortgages securing the Brando Claim No. 22 were both fraudulent and void, as the trial court held and the Court of Appeals confirmed, without one word being directed in the "Argument" to Questions 2 and 3 (dealing with Claims Nos. 19, 20, 12 and 13) which are the primary "Questions Presented" in the Cross-Petition (p. 3).

In other words, Respondents' entire "Argument" deals only with Claim No. 22 and says nothing at all about Claims Nos. 19, 20, 12 and 13, and yet this "one-man corporation" argument relates only to Claims Nos. 12 and 13 and has nothing to do with Claim No. 22, or for that matter with Claims Nos. 19 and 20.

Apparently this "Conditional Cross Petition" is filed in the hope of drawing the Court's attention away from the simple issue raised in our Petition for Certiorari by pretending that the granting of our Petition will compel the Court to consider numerous other questions, even though there is not one word in Respondents' Cross-Petition to show that any of these side issues of fact has anything to do with the simple but highly important issues which are presented in our Petition.

For the foregoing reasons, whether or not this Court grants our Petition for Certiorari, we respectfully submit that Respondents' Conditional Cross-Petition for Writ of Certiorari should be peremptorily denied.

Respectfully submitted,

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